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THE GOVERNMENT OF NORMANDY UNDER HENRY II.

II.

AFTER 1164 the point of view of our study must be somewhat shifted. Thanks to a series of legislative monuments and treatises which have no Norman analogues, we can trace with some confidence the course of English constitutional development, while our knowledge of Norman affairs is too scanty to permit following the evolution of institutions or policies. The most that we can attempt is to reconstruct the chief elements of judicial and fiscal organization and procedure, in the hope of furnishing an instructive parallel to better known English conditions.

The turning-point in the constitutional history of Normandy during the latter part of Henry's reign is the year 1176, when the death of the seneschal and justiciar, William de Courcy,¹ led the king to appoint in his place as ruler of Normandy Richard of Ilchester, bishop of Winchester, long a trusted officer of the English Exchequer, where he had charge of a special roll and proved himself particularly "alert and businesslike in reckonings and the writing of rolls and writs".² Very possibly the constitutional development of Normandy may have lagged behind that of England in the busy years which intervened between the Constitutions of Clarendon and the Assize of Northampton; very likely its administration had fallen into disorder after the rebellion of 1173; certain it is that Richard was excellently qualified by talent and experience to undertake the reorganization of governmental business which seems to have been effected during the year and a half which he now spent in Normandy.

¹ On whom see Delisle, *Recueil des Actes de Henri II. Roi d'Angleterre et Duc de Normandie concernant les Provinces Françaises et les Affaires de France, Introduction*, pp. 476-478.

² *Dialogus*, I. 5 (Oxford ed., p. 77). On Richard see Miss Norgate, in *Dictionary of National Biography*, XLVIII. 194; Delisle, 431-434; Poole, *The Exchequer in the Twelfth Century*, pp. 116 ff. It is not quite true, as Miss Norgate says, that we have no trace of his activity during his sojourn in Normandy. He is mentioned in three documents: a charter of Philippa Rosel given at the Exchequer in 1176 (original in British Museum, Add. Ch. 15278; Round, no. 517); an assize which he held at Caen in January, 1177 (*Livre Noir de Bayeux*, no. 95; Delisle, p. 347); and an assize held at Montfort "quo tempore Richardus Wintoniensis episcopus in Normannia post regem erat iudex et maior iustitia" (Valin, *Le Duc de Normandie et sa Cour*, p. 272). A tallage levied by him is still carried on the roll of 1180 (Stapleton, *Magni Rotuli Scaccarii Normannie sub Regibus Anglie*, I. 74).

It is not without significance that the roll of 1176 remained the basis of reckoning for more than twenty years, and that from this year we begin to follow with some clearness and continuity the judicial work of the Norman Exchequer.

It has indeed been maintained that the term exchequer does not previously occur in Normandy, and hence that Richard is the creator of the institution.³ The author of the *Dialogus*, however, who began his treatise while Richard was in Normandy, refers to the Norman Exchequer as an ancient institution, as old perhaps as the Conqueror,⁴ under whom we can trace the regular accounting for the ferm of the *vicomtés* which is the essence of such a fiscal system;⁵ and the name *scaccarium* occurs in 1171⁶ and in a notice of Henry I.'s reign discovered by Round.⁷ At what epoch there was introduced the distinctive method of reckoning which gave the Exchequer its name, is an even darker problem in Normandy than in England. According to an ingenious conjecture of Poole,⁸ the employment of the abacus for balancing the royal accounts came to England from the schools of Laon in the reign of Henry I. To me the epoch of its introduction seems probably earlier and connected with the abacists of Lorraine in the preceding century;⁹ but in any case the Eng-

³ Valin, pp. 116-136. On Valin's own showing we can hardly imagine Richard creating the Exchequer between his arrival toward Michaelmas of 1176 and the regular session of that body, doubtless also at Michaelmas, mentioned in the Rosel charter of that year (see the preceding note).

⁴ I. 4 (Oxford ed.), p. 66.

⁵ AMERICAN HISTORICAL REVIEW, XIV. 464-468 (1909); *English Historical Review*, XXIV. 223 (1909), XXVI. 328 (1911) (a *terra data* under the Conqueror). For accounts which run far back of 1176 see Stapleton, I. 12, 92, 94. On the administrative organization as the essence of the Exchequer cf. Liebermann, *Eng. Hist. Rev.*, XXVIII. 153 (1913).

⁶ Delisle, p. 345; cf. *Eng. Hist. Rev.*, XXVI. 326-328 (1911). No reliance can be placed on the early mention of the Exchequer in a highly suspicious document for St. Evroul, Round, nos. 638, 639; Delisle, p. 316. There is an important document from the Exchequer, 1178-1180 (Round, no. 1123), which Valin overlooks. His misreading of "*rotulis trium annorum*" (p. 135) as a single roll hardly requires comment.

⁷ *Eng. Hist. Rev.*, XIV. 426 (1899). Valin labors hard to explain away this document, which upsets his whole theory of the origin and functions of the Exchequer, on the ground that it was drawn up, probably later, by a canon of Merton who introduced English terminology. Taken apart from any preconceived theory, however, it is strictly parallel to the other notices concerning the lands of Bernard the Scribe, all of which are plainly contemporary records of transactions of the reign of Henry I. and show no trace of tampering. The document is accepted by Poole and Powicke. For a parallel form of 1199 see the facsimile in *Mémoires des Antiquaires*, XV.

⁸ Poole, *The Exchequer in the Twelfth Century*, pp. 42-59.

⁹ See my article on "The Abacus and the King's Curia", *Eng. Hist. Rev.*, XXVII. 101-106 (1912). Norman clerks also were in relations with the schools of Lorraine, Ordericus, III. 265.

lish evidence antedates the Norman, and the process may very well be, as Poole urges, "from England to Normandy, not from Normandy to England".

The absence of earlier rolls deprives us of all basis for fixing the nature of Bishop Richard's reforms, which probably had less to do with the mechanism of administration than with the re-establishment of order in the finances through the collection of back accounts—arrears of seven, fifteen, even twenty years meet us in the roll of 1180¹⁰—the revision of the farms, and the change of officials which is recorded in 1177.¹¹ Whatever Richard accomplished, he did not make the Norman Exchequer a copy of the English, for in 1178–1179 the *Dialogue* tells us that the two bodies differed "in many points and wellnigh in the most important".¹²

What these great differences were, apart from the absence of blank farm in Normandy, it is impossible to say, for we have no Norman *Dialogue*. The terms of the Norman Exchequer are the same as the English, Easter and Michaelmas; the officers are likewise called barons; the place is fixed at Caen, where the principal treasury was.¹³ One point of divergence which appears from the rolls is that in Normandy each section begins with a statement of the total amount due, whereas in the Pipe Rolls, until 8 Richard I., this can only be discovered by computation.¹⁴ Variation in nomenclature is also seen in the Norman heading *misericordie, promissiones et fines*, corresponding to the *placita, conventiones*, and *oblata* of the English record. In general, however, the two sets of rolls rest upon the same fundamental system of accounting,¹⁵ the greater detail and subdivision of the Norman roll resulting from the existence of a set of local areas much more complex and irregular than

¹⁰ Stapleton, I. 12, 92, 94.

¹¹ Benedict of Peterborough, I. 198. The words of Ralph de Diceto (I. 424) "*fiscalia diligenter recensens*" need mean no more than is here suggested. On these points I am glad to find myself in agreement with Professor Powicke (pp. 73–75, 85).

¹² I. 4 (p. 66).

¹³ That the principal treasury was at Caen as early as 1172 is clear from Robert of Torigni's account (II. 297) of the deposit there of the barons' returns of that year. See also Stapleton, I. 56, and another mention on page 110, where the treasury at Rouen is likewise important. Treasure was also kept at Falaise (*ibid.*, I. 39), which had been the principal place of deposit under Henry I. (Robert of Torigni, I. 200; Ordericus, V. 50), and at Argentan (Delisle, p. 334). On the use of castles for the custody of treasure see Round's introduction to the *Pipe Roll of 28 Henry II.*, p. xxiv.

¹⁴ Stapleton, I. xi; Poole, *The Exchequer in the Twelfth Century*, p. 130.

¹⁵ Powicke, p. 74, notes as an example the parallel distinction "between these fines and amercements for which the bailiff is responsible personally, and those for which the persons concerned are responsible".

the English shires. The older *vicomté* and *prévôté* persist in spite of the superposition of the newer *bailliage*; ¹⁶ many of the tithes and fixed allowances go back to the Conqueror's time or even earlier, ¹⁷ and the ferm, less affected by *terre date* than in England, seems to have undergone little change except in the case of important commercial centres like Rouen, Caen, and Dieppe. ¹⁸ The whole substructure of ducal finance was evidently very ancient, and for that reason in Henry's time quite inadequate, and the rolls show clearly that, as in England, the chief means for supplementing it were found in the administration of civil and criminal justice. However interesting it might be to follow out in detail the points of agreement and divergence in the methods of the two Exchequers, the fact of primary importance is that, so far as northern Europe is concerned, England and Normandy stand in a group by themselves, well in advance of all their neighbors in the development of a money economy and in the mechanism of fiscal administration.

As regards its functions as a court, it has recently been argued ¹⁹ that the Exchequer of the Norman dukes was in no sense a judicial body and was in no wise connected with the later *Échiquier de Normandie*. This view is a natural reaction against those writers who approached the earlier institution with the ideas of an age when the Exchequer was known only as a court, but it assumes a breach in that continuity of law and institutions which is in general so noteworthy in passing from Angevin to Capetian Normandy, and it does not fully realize the fluidity of the Anglo-Norman *curia*. ²⁰ What we seem rather to find is a *curia* which sits for fiscal purposes at Caen and for judicial purposes at various places in the duchy, and which, when Philip Augustus transfers its fiscal duties to Paris, retains its judicial functions and its Anglo-Norman name. The chief thing to avoid in tracing its history is the projection back into the Anglo-Norman period of the more fully organized *Échiquier* which we know from the *Grand Coutumier* and the *arrêts* of the thirteenth century. From the reigns of Henry II. and Richard a small but definite body of cases furnishes conclusive evidence of the activity of the Exchequer in judicial matters, and indicates that there was no

¹⁶ On the whole subject of local geography, see Powicke, pp. 61-79, 103-119

¹⁷ AMERICAN HISTORICAL REVIEW, XIV. 465-467; *Eng. Hist. Rev.*, XXIV. 223 (1909).

¹⁸ *Eng. Hist. Rev.*, XXIV. 222-224 (1909); Stapleton, I. 56, 68, 70.

¹⁹ Valin, pp. 137-139, 249-251, the two passages are not wholly consistent. See, *contra*, Powicke, *Loss of Normandy*, pp. 85, 398.

²⁰ On the fundamental identity of *curia*, Exchequer, and assizes, see Fréville, "Étude sur l'Organisation Judiciaire en Normandie aux XII^e et XIII^e Siècles", *Nouvelle Revue Historique de Droit*, 1912, p. 683.

clear distinction between its competence and that of the *curia regis*.²¹ As in England in the same period,²² it seems probable that the difference was essentially one of place: when the *curia* sat in the Exchequer chamber at Caen, it was said to sit at the Exchequer, when it sat elsewhere it was called simply the *curia*. Certainly the distinction was not, at least among the higher officers, one of personnel, for the same men appear at one time as barons, or justices,²³ of the Exchequer and at another as justices holding assizes in various parts of Normandy.²⁴ In the sessions of the Exchequer the seneschal naturally presided, accompanied by certain men who bear the title of barons or justices, but in the documents are not always distinguishable from the other barons and clerks in attendance. In a charter of 1178–1180,²⁵ besides William Fitz Ralph the seneschal, we find as barons, William de Hummet, the constable, Master Walter of Coustances, who had served as clerk of the king's *camera* and keeper of the seal, and was perhaps treasurer of Normandy,²⁶ Osbert de la

²¹ For cases and transactions before the Exchequer in this period see *Mémoires des Antiquaires*, XV. 198–201; Delisle, p. 349; Valin, pièces, nos. 19, 24, 25, 28; Round, nos. 309, 310, 438, 461, 485 (another version in MS. Lat. 10086, f. 109v), 509 (also in the British Museum, Add. Ch. 15289, no. 2), 517 (original in Add. Ch. 15278; some additional witnesses in the confirmation in Archives of the Calvados, H. 322, no. 3), 560, 606 (where the witnesses are omitted; original in Archives of the Calvados, H. 6607, 301–303), 608, 1123; cartulary of Fécamp, f. 25 (letter of Archbishop of Rouen to William Fitz Ralph and the other barons of the Exchequer notifying them of the settlement of a question of presentation in the court of the Bishop of Bayeux); Cartulaire de Normandie, f. 68v (*infra*, note 23); Archives of the Calvados, H. 5716, 6607 (78–83, 309), 6653 (338–342), 6672 (293–301), 6679 (186–191), 7707; Archives of the Orne, H. 3916 (*infra*, note 28); and the following passage in Richard's great confirmation of the privileges of St. Stephen's: "Recuperavit idem [abbas Willelmus, d. 1179] super Robertum de Veim in curia H. regis patris nostri apud Cadomum hereditagium quod idem Robertus clamabat in tenendo manerio de Veim et de Sancto Leonardo, et super Robertum de Briecuria ecclesiam Sancti Andree de Vilers de qua monachos violenter dissaisierat sed iudicio baronum qui erant ad scaccarium apud Cadomum adiudicata est ecclesia predicta Sancto Stephano et restituta". Archives of the Calvados, H. 1836; *cf.* Deville, *Analyse*, p. 52. Most of these documents relate to agreements or acknowledgments before the Exchequer, but good examples of judicial proceedings will be found in the last extract; in Valin, nos. 24, 25, 28; in Round, nos. 309, 310, 438; and in the documents given in facsimile in *Mémoires des Antiquaires*, XV.

²² Poole, *The Exchequer in the Twelfth Century*, pp. 174–182; *cf.* Adams, in *AMERICAN HISTORICAL REVIEW*, XVIII. 357 (1913).

²³ "Hoc autem factum fuit apud Cadomum ad scaccarium coram iusticiis domini regis tempore Willelmi filii Radulfi senescalli Normannie". Cartulaire de Normandie, f. 68v. So also in Valin, nos. 19, 24; Round, nos. 438, 509, 517, 1123.

²⁴ See the list of assizes, *infra*, appendix.

²⁵ *Mémoires des Antiquaires*, XXX. 672 (*cf.* XIX. 66); Round, no. 1123.

²⁶ Delisle, pp. 106–113. The title "thesaurarius Rothomagensis" (Delisle, p. 101; Round, no. 34) probably means treasurer of the cathedral rather than

Heuse, constable of Cherbourg, Ranulf de Grandval, Richard Giffard, and Gilbert Pipart, justiciars of the king, the last two having served as justices in England and as barons of the Norman Exchequer under Richard of Winchester.²⁷ Later we find most frequently Haimo the butler, the justices William de Mara and Richard Silvain, Jordan de Landa, and certain clerks, of whom as many as four appear in one charter of the period.²⁸ Most of these clerks are only names to us, but we can follow with some clearness two members of the clerical family of Arri, Roger, canon of Bayeux since the early years of Henry's reign and a regular witness in records of the *curia* and Exchequer from 1164 to 1191,²⁹ and Anquetil, who attests less frequently but receives a livery as clerk of the Exchequer as late as 1198,³⁰ while another type appears in William Calix, a constant witness from the time of Richard of Ilchester, a responsible disbursing officer in the roll of 1184, and a large money-lender on his own account, forfeiting to the crown at his death a mass of chattels and pledges³¹ which suggests on a smaller scale the operations of that arch-usurer William Cade.³² The rolls show other ecclesiastics active in the business of the Exchequer, notably the king's chancellor, Ralph of Wanneville, later bishop of Lisieux and treasurer of Normandy,³³ but until Henry's faithful clerks are rewarded with the sees of

royal treasurer at Rouen; but Ralph of Wanneville, treasurer of Rouen, was also treasurer of Normandy (Round, no. 21; Stapleton, I. 110), and we know that the office of ducal treasurer had been combined with a canonry in the cathedral from the time of Henry I. (*Eng. Hist. Rev.*, XXIV. 224-226, 1909). There are relations between the duke and the treasurer of Avranches (Delisle, p. 346) and Bayeux (*AMERICAN HISTORICAL REVIEW*, XIV. 471, 1909; *Livre Noir*, nos. 13, 138, 271, 275) which may have had some significance. For the conversion of the plate of Rouen cathedral to the uses of Henry II. see MS. Rouen 1405, f. 18 (Round, no. 274).

²⁷ Delisle, pp. 376, 428.

²⁸ Grant of Willelmus de Mool to the nuns of Almenesches, Archives of the Orne, H. 3916: "Actum est hoc apud Cadomum ad scacarium coram Willelmo filio Radulfi tunc Normannie senescalco, testibus his: Anschetillo de Arre, Radulfo de Lexoviis, Daniele, magistro Gaufrredo de Cortone clericis de scacario, R. abbate Sancti Andree de Gofer, Ricardo Hartie, Turofredo de Cyerni, Willelmo filio comitis Johannis, Henrico de Mool, Radulfo de Rupetra, Ricardo de Argenciis, Radulfo Martel, et aliis pluribus".

²⁹ Part I., note 62; *Livre Noir*, nos. 45, 73, 128, 129, 135, 139, 182, 442; Round, nos. 432, 435, 437, 438, 456, 461, 485, 509, 1446, 1447, 1451; the Exchequer notices cited in note 21; and the list of assizes below, p. 289.

³⁰ Stapleton, I. 145, 225, II. 376, 384; and the lists just cited.

³¹ Round, no. 517; Stapleton, I. cli, 110, 129, 130, 145, 170, 171, 183, 194-198, 226, 228, 240, II. 375, 379 (the Countess of Richmond as a debtor), 465-469; and the lists.

³² On whom see *English Historical Review*, XXVIII. 209-227, 522-527, 730-732 (1913).

³³ Delisle, pp. 99-103.

Évreux, Lisieux, and Rouen toward the close of the reign, the higher clergy are less prominent in the administration than they were in his earlier years.

Of those who serve the king in Normandy many have served or will serve him elsewhere; his officers and treasure are passing to and fro across the Channel; his household is ever on the march, and some elements in it are common to the whole Plantagenet empire; yet Normandy has also officers of its own. Some are clerks, such as the treasurer,³⁴ the subordinates in the Exchequer,³⁵ and the chaplains of the great castles;³⁶ some are serjeants, acting as ushers,³⁷ money-changers,³⁸ writers,³⁹ marshals,⁴⁰ pantlers,⁴¹ and larderers;⁴² and for local government there are the keepers of jails, parks, and forests⁴³ and fairs,⁴⁴ as well as the *vicomtes*, *prévôts*, *baillis*, and constables upon whom the whole system rested—in all a multitude of officials, compared by Peter of Blois to an army of locusts,⁴⁵ with the bureaucratic element rapidly gaining on the feudal in a way which anticipates the *gens du roi* of the thirteenth century.

Throughout the administration of justice the seneschal is the all-important figure. Something of his enhanced importance was doubtless due to the absences of Henry and Richard and the decline of the personal justice of the sovereign, but something must also

³⁴ The relation of the treasurer to the chamberlain on the one hand and to the custody of local treasure on the other is not perfectly clear. In the rolls of 1180 and following the Norman treasurer has an assured income unconnected with service in the king's household and consisting of the tithes of the *vicomtés* of Fécamp, Caux, Auge, Lieuvin, Roumois, and the country between Risle and Seine, and of the great forests of the Seine valley. Certain of these can be found in the possession of Henry I.'s treasurer, and their antiquity and situation may point to an even earlier origin. See *Eng. Hist. Rev.*, XXIV. 224 f. (1909). The duke's chaplain at Bayeux similarly had the tithe of the regards of the forest of Vernai (Stapleton, I. 5). Can this have some connection with a local treasury (*supra*, note 26)?

³⁵ *Supra*, notes 28–31; and *cf.* the clerks who appear in the roll of 1180, pp. 37, 56–58.

³⁶ Stapleton, I. 5, 7, 90; *Rotuli Normannie*, pp. 7, 23; *Rotuli Cartarum*, pp. 69, 107.

³⁷ Valin, p. 151, note 3; *Rotuli Cartarum*, p. 82; Eyton, *Court, Household, and Itinerary of Henry II.*, p. 9.

³⁸ Delisle, nos. 199, 381, 527; Stapleton, I. 77; "Symon cambitor tunc prepositus Andeleii" in cartulary of Mortemer (MS. Lat. 18369), f. 103 (1168).

³⁹ Hereditary *scriptor prepositure Cadomi* in *Olim* (ed. Beugnot), I. 417.

⁴⁰ Delisle, *Cartulaire Normand*, no. 13; *Eng. Hist. Rev.*, XXVII. 442 (1913).

⁴¹ Delisle, no. 14. *Cf.* Round, *King's Serjeants*, pp. 199–201.

⁴² Stapleton, I. 30, 99, 274, II. 471, 572 f.; *Bibliothèque de l'École des Chartes*, XI. 410, note 14.

⁴³ Delisle, *Cartulaire*, no. 13; *id.*, *Henri II.*, nos. 120, 121, p. 209.

⁴⁴ Delisle, *Henri II.*, pp. 210, 271, 346.

⁴⁵ *Epistolae*, no. 95, in Migne, *Patrologia*, CCVII. 298.

be ascribed to the personality of William Fitz Ralph, who in 1178 came fresh from his experience as itinerant justice in England and held the office until his death in 1200, exerting an influence upon Norman law which may still be traced in the *Très Ancien Coutumier*.⁴⁶ As the *alter ego* of the king the seneschal was the head of the whole judicial system, and in his sovereign's absence he alone could preside in the judgment of those who had the privilege of appearing only before the duke or his chief justiciar.⁴⁷ We find him holding court, not only at Caen, where the traces of his activity are naturally better preserved, but at Argentan, Bernai, Longueville, Neufchâtel, St. Wandrille, and Rouen. With him sit such men as William de Mara, Richard Giffart, Richard of Argences, and John d'Éraines, archdeacon of Séez, who also in groups of two or three hold assizes in various parts of Normandy.⁴⁸ With no help from the Exchequer Rolls and only scattered references in the charters, it is impossible to define the composition of these assizes or determine how often they were held. In the documents the list of justices is often incomplete, and they are frequently indistinguishable from the other witnesses; yet we can identify many of them with the *baillis* and constables who meet us in the rolls, and occasionally an assize is held by a group of constables covering a considerable district. According to the custom of 1199-1200, a doubtful witness upon such points, assizes are held once or twice a year in each *vicomté* and are attended by the ducal officers within the district and by the local lords, who are forbidden to hold their own courts during the session of the assize.⁴⁹ Full rolls are kept of the cases considered and the names of the jurors, and the clerks have also their little parchments to record the various fines and payments.⁵⁰ The theory still survives that all chattels of offenders are forfeited to the duke, for "the

⁴⁶ Delisle, pp. 219-220, 481-483; Tardif, *Très Ancien Coutumier*, p. 105; Valin, pp. 160-163, where the fines carried in later Pipe Rolls are wrongly taken as evidence that William was justice in England after 1178. The Norman roll of 1180 (pp. 56, 57) shows that he received pay for the full year 1179/80 and administered justice in a preceding year.

⁴⁷ For examples see Delisle, pp. 162, 219.

⁴⁸ See below, p. 290.

⁴⁹ *Très Ancien Coutumier*, cc. 25-29, 36, 37, 44, 55, 56; Robert of Torigni, II. 117; Fréville has shown (*Nouvelle Revue Historique de Droit*, 1912, pp. 715-724) that the *Très Ancien Coutumier* cannot be taken as an unmixed source for the judicial organization of the Plantagenet period; its statements respecting law and procedure are less likely to have been affected by French influence. The preponderance of the official element in the administration of justice in the twelfth century is well brought out by Fréville (pp. 682 ff.), who, however, goes too far in excluding the non-professional element. His studies of the meaning of the word baron in this period are worth pursuing further.

⁵⁰ *Très Ancien Coutumier*, cc. 25, 28, 29, 65.

function of the sworn affearors is to declare what goods the offender has";⁵¹ but there are maximum payments for the various classes of society, and knight and peasant enjoy exemption of their arms and means of livelihood in a way which suggests the well-known clause of *Magna Carta*.⁵² The justices have a reputation for extortion on technical pretexts,⁵³ and the Exchequer Rolls show them bent on upholding the dignity and authority of their court by fines for contradiction and foolish speaking, for leaving its session without permission, and for disregarding or transgressing its decrees.⁵⁴ Even lords of the rank of Hugh de Longchamp and Hugh de Gournay are heavily mulcted for neglecting the summons to the regard of the forest.⁵⁵

The ordinary local courts of the *vicomte* and *bailli* are not mentioned in the *Très Ancien Coutumier* and have left few traces in the charters. Early in the reign they had been ordered to meet once a month;⁵⁶ in the Avranchin the *vicomte* held pleas three times a year in Ardevon and Genest.⁵⁷ Once the sole agent of the duke in all departments of local administration, the *vicomte* saw his power greatly reduced by the development of the itinerant justices, and we have no means of knowing just what he still retained under the pleas which remained a constituent element of his farm. The newer jurisdictions of the *bailli* and constable have also to be reckoned with, and there were probably differences of local custom as well as changes in the course of the Angevin period. Thus the pleas of the sword regularly stood outside of the local farm⁵⁸ and fell naturally to the itinerant justices, yet in the district of Falaise a charter of Henry II. specifically reserves them to the *baillis*.⁵⁹ The local officers also possessed a minor civil jurisdiction, as we see from a writ in which Henry orders the constable and *baillis* of Cherbourg to do full justice

⁵¹ Pollock and Maitland, *History of English Law* (second ed.), II. 513.

⁵² *Très Ancien Coutumier*, cc. 55, 56; *Magna Carta*, c. 20; and on its interpretation, Tait and Pollard, *Eng. Hist. Rev.*, XXVII. 720-728 (1912), XXVIII. 117 (1913).

⁵³ *Très Ancien Coutumier*, c. 65.

⁵⁴ Stapleton, I. 5, 16, 21, 34, 41, 51, 54, 58, 80, 86, 113, 116.

⁵⁵ *Ibid.*, I. 59, 74. On pleas of the forest see the Fécamp cartulary (MS. Rouen 1207), f. 36v.

⁵⁶ Robert of Torigni, II. 180; *ante*, part I. of this article, p. 37.

⁵⁷ Delisle, p. 346. *Cf.* the pleas held by Nigel, seneschal of Mortain, Stapleton, I. lxx, 11; Delisle, p. 408.

⁵⁸ This is specifically stated for the Hiesmois (see the following note), for the castle of Gaillon (Delisle, *Cartulaire Normand*, no. 120), and for the *vicomté* of Bonneville and the *prévôtés* of Falaise and Domfront (*ibid.*, no. 111).

⁵⁹ *Cartulaire de Fontenay-le-Marmion* (ed. Saige), no. 1; Delisle, no. 509; *cf.* Valin, p. 227. Later they are held here by the itinerant justices, *Rotuli Normannie*, p. 20.

in a certain case unless the land in question be a knight's fee or a burgage of more than a hundred shillings' annual value, in which event the matter doubtless went to the higher court.⁶⁰ In general, however, the local writs are administrative rather than judicial,⁶¹ and throw no light on the work of the local courts.

With respect to the criminal jurisdiction of the duke, we have a list of pleas of the sword drawn up before 1174,⁶² elaborated at certain points in the earlier part of the *Très Ancien Coutumier*,⁶³ and confirmed by the fines recorded in the Exchequer Rolls and the cases reserved by Henry in his charters.⁶⁴ The enumeration includes murder and slaying, mayhem, robbery, arson, rape, and the plotted assault, offenses against the peace of the house, the plow, the duke's highway and the duke's court, against his army and his coinage. In large measure this list goes back to the Conqueror's time, when many of these pleas had already been granted to the great immunists, lay and ecclesiastical, who still continued to retain them under Henry.⁶⁵ Barons, however, whose courts encroach on the duke's jurisdiction must expect to be fined by his justices,⁶⁶ as must

⁶⁰ "H. Dei gratia rex Anglorum et dux Normannorum et Aquitaniorum et comes Andegavensium constabulario et baillivis suis re Cesarisburgo salutem. Precipio vobis quod sine dilatione plenum rectum teneatis priori et canonicis sancte Marie de Voto iuxta Cesarisburgum de terra que fuit Preisie apud Cesarisburgum et dedomo quam ipsa eis dedit, quas Willhelmus Pichard et uxor Rither' eis difforciant, nisi sit feodum lorice vel burgagium quod valeat plusquam .c. solidos per annum. Et nisi feceritis iusticia mea Normannie faciat, ne amplius inde clamorem audiam pro defectu recti. Teste Hugone Bardulf dapifero apud Bonamvillam." Original, with fragment of *simple queue*, in Archives of the Manche, H. 1963. Printed from a poor copy by Bigelow, *History of Procedure*, p. 367; Round, no. 949; Delisle, no. 494 (1185-1189). A controversy concerning a mill is settled June 30, 1175, "in presentia W. de Huechon conestabularii regis": *Livre Blanc* of St. Martin of Séez, f. 13. Cf. the constable of Mortain, part I., note 72.

⁶¹ For examples see Round, nos. 25, 26, 131, 205-207, 492 (where the original has "Beiesino" in the address), 939, 1282; Delisle, pp. 164 f., 179 f.

⁶² *Très Ancien Coutumier*, c. 70. For the date see part I. of this article, note 22 (XX. 28).

⁶³ *Très Ancien Coutumier*, cc. 15, 16, 35, 53, 54, 58, 59; cf. Pollock and Maitland, II. 455.

⁶⁴ Round, nos. 375, 382, 420; Delisle, *Cartulaire Normand*, no. 16; *id.*, *Henri II.*, no. 495.

⁶⁵ *Eng. Hist. Rev.*, XXIII. 502-508 (1908); *AMERICAN HISTORICAL REVIEW*, XIV. 460-462 (1909). Cf. Powicke, pp. 80 ff.

⁶⁶ "Pro placitis ensis iniuste captis", Stapleton, I. 21. "Pro duello latrocinii male servato in curia sua. . . pro duello de combustione male servato in curia sua", *ibid.*, I. 123. On the right of barons to hold pleas of the sword see *AMERICAN HISTORICAL REVIEW*, XIV. 461 (1909); Valin, pp. 220 ff.; Powicke, pp. 80-88. That the justices might sit in franchise courts is seen from a charter of John for William of Briouze (*Rotuli Normannie*, p. 20; see Powicke, *Eng. Hist. Rev.*, XXII. 18, 1907) and from the following extract from the cartulary of Savigny (f. 27v): "Fidelibus universis Guillelmus Avenel salutem. Sciatis quod Robertus pincerna et Guillelmus frater eius in presentia mea in curia comitis in

those who seek to settle such crimes out of court.⁶⁷ Since the early years of the reign men are fleeing the realm for murder, robbery, and similar offenses, which already bear the name of felonies,⁶⁸ and their chattels become a large element in the ducal revenues.⁶⁹ Nothing is said of their accusation by a jury of presentment, but we have seen reason for thinking that such juries were in use after 1159,⁷⁰ and the chattels of those who fail at the ordeal by water are accounted for in the roll of 1180 as they are in the Pipe Rolls after the Assize of Clarendon.⁷¹ The pleas of the crown are viewed as a source of income analogous to the various portions of the ducal demesne; in the Avranchin, at least, they are in charge of a special officer, or coroner, as early as 1171.⁷²

In civil matters the ducal courts had cognizance of disputes concerning church property, so far as these did not come under ecclesiastical jurisdiction,⁷³ and of such suits concerning land as involved the use of the recognition. From early times the property of churches and monasteries had been assimilated to the duke's own demesne (*sicut res mea dominica*) and charters repeatedly declare that particular establishments shall be impleaded only in the king's

plenaria assissa coram baronibus domini regis concesserunt monachis Savignei . . . in manu mea qui tunc eram senescallus domini comitis Moretonii." Cf. the justices in the court of the Bishop of Lisieux, part I. of this article, note 105 (XX. 41). The baron's jealousy of losing his court is illustrated by the following: "B. de Sancto Walerico maiori et paribus communie Rothomagensis salutem et magnum amorem. Audivi quod vos misistis in placitum Walterum fratrem meum de masura mea que iuxta atrium beate Marie de Rothomago. Unde non parum miror, cum non defecerim alicui de recto tenendo. Mando igitur vobis quod dimittatis mihi curiam meam sicut alii barones regis vel etiam minores habent, quia libenter quando requisitus fuero rectum faciam". Cartulary of the chapter of Rouen (MS. Rouen 1093), f. 112.

⁶⁷ Stapleton, I. 25-27, 32; cf. 26, 51; *Très Ancien Coutumier*, c. 36.

⁶⁸ "Nisi sint fugitivi de terra mea pro muldro vel furto vel alio scelere": charter of Henry for Fécamp, not later than 1162, in Valin, p. 269; Delisle, no. 146; Round, no. 133, where a curious misreading of *indictum* makes the document relate to a court instead of a fair. In another charter of 1162 for Fécamp we have (Delisle, no. 147): "Habeant meam firmam pacem in eundo morando redeundo nisi nominati calumpniati fuerint de prodicione vel feloniam."

⁶⁹ See the *catalla fugitivorum* in Stapleton, I. 4, 7, 10-12, 15, 16, 22, 23, 27, 29, 32-34, 43, 49, 55, 58, 72, 89, 94; Delisle, pp. 335, 339, 340, 343; and cf. *Très Ancien Coutumier*, cc. 36, 37. In the cartulary of La Trinité de Caen, MS. Lat. 5650, f. 84v, we read in an inquest of this reign: "De feodo Rogeri Terrici fugitivi pro latrocinio inquirendum est ibidem."

⁷⁰ *Supra*, part I., p. 37.

⁷¹ Stapleton, I. 62; and for England, Stubbs, *Benedictus*, II. lxiii, note.

⁷² Delisle, p. 346; *Eng. Hist. Rev.*, XXV. 710 f. (1910), XXVI. 326 f. (1911). For mention of coroners in England before 1194, see Gross, *Coroners' Rolls*, pp. xv-xix.

⁷³ *Très Ancien Coutumier*, c. 53.

court, in some cases only before him or his principal justiciar.⁷⁴ The protection of possession by the duke, praised especially by the author of the first part of the *Très Ancien Coutumier* as a defense of the poor against the rich and powerful, is secured, as in England, by recourse to twelve lawful men of the vicinage. The possessory assizes described in this treatise⁷⁵ correspond to the four English assizes, and the Exchequer Rolls furnish abundant evidence that they were in current use by 1180.⁷⁶ On the other hand the principle that no man should answer for the title of his free tenement without royal writ does not seem to have been as broadly recognized in Normandy as in England, nor do we find anything which bears the name of the grand assize;⁷⁷ but its Norman analogues, the *breve de stabilia* and *breve de superdemanda*, appear in the early Exchequer Rolls,⁷⁸ as does also the writ of right.⁷⁹ In the few instances where comparison with Glanvill is possible, the Norman writs seem to have preserved their individuality of form, while showing general agreement in substance. Even in the duke's court, the law of Normandy has its differences from the law which is being made beyond the Channel, nor can we see that its development shows any dependence upon the law of England.

At this point our sketch of Norman institutions under Henry II. must draw to a close. The evidence is all too scanty, and while it would be easy to piece it out with English or French parallels, the result would not be Norman. It would be interesting also, were it possible, to seek to ascertain what, in an institutional sense, Normandy had given and received during a century and a quarter of union with England and during more than a generation of membership in the Plantagenet empire. Certainly the movement was not all in one direction. If the two chief figures in Norman administration in Henry's later years, Richard of Ilchester and William Fitz Ralph, had served an English apprenticeship, there had earlier in the reign been Norman precedents for Henry's English legislation.

⁷⁴ Brunner, *Schwurgerichte*, p. 238 ff.; Delisle, pp. 162, 219.

⁷⁵ Cc. 7, 16-19, 21, 23, 57. See Brunner, c. 15, who, however, points out that the Norman parallel to the assize *utrum*, the *breve de feodo et elemosina*, is a petitory writ.

⁷⁶ *E.g.*, Stapleton, I. 5, 12, 13, 19, 64, 65, 96, *cf.* 114, 115 (1184). *Cf.* Brunner, p. 307.

⁷⁷ Brunner, pp. 410-416.

⁷⁸ *Ibid.*, pp. 312-317; Stapleton, I. 11, 13, 29; Delisle, p. 339; *Très Ancien Coutumier*, c. 85. Tardif (p. lxxv) points out that the appearance of the seneschal's name in these writs carries them back of 1204, when the office was abolished.

⁷⁹ *Très Ancien Coutumier*, c. 30; and the numerous payments in the rolls *pro recto habendo*.

If the English military inquest of 1166 preceded the Norman returns of 1172, the Assize of Arms and the ordinance for the Saladin tithe were first promulgated for the king's Continental dominions. The order of these measures may have been a matter of chance, for to a man of Henry's temperament it mattered little where an experiment was first tried, but it was impossible to administer a great empire upon his system without using the experience gained in one region for the advantage of another. There was wisdom in Geoffrey's parting admonition to his son against the transfer of customs and institutions from one part of his realm to another,⁸⁰ but so long as there was a common element in the administration and frequent interchange of officers between different regions, it could not be fully heeded. A certain amount of give and take there must inevitably have been, and now and then it can definitely be traced. On the other hand, it must not be supposed that there was any general assimilation, which would have been a still greater impossibility. Normandy preserved and carried over into the French kingdom its individuality of law and character, and as a model of vigorous and centralized administration it seems to have affected the government of Philip Augustus in ways which are still dark to us. When that chapter of constitutional history comes to be written, if it ever can be written, it will illustrate from still another side the permanent importance of the creative statesmanship of the Norman dukes.

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APPENDIX

The roll of 1180, unlike the contemporary Pipe Rolls, throws no light upon the judges' circuits, save for the mention of William Fitz Ralph on page 57 and of Geoffrey le Moine on page 52 (*cf.* p. 78 and Round, no. 517); such indications are more abundant in the roll of 1195. The following list includes such assizes as I have noted in the latter part of Henry's reign and the early years of Richard; in them William Fitz Ralph regularly has the title of seneschal:

1. 1177, January; Caen. Richard, bishop of Winchester, Simon de Tornebu, Robert Marmion, William de Glanville as justices. *Livre Noir*, no. 95; Delisle, p. 347; Round, no. 1446.

2. 1176-1178; Montfort. Justices: William de Mara, *vicomte* of Ste.-Mère Église, William Malet, Hugh de Cressi, Seher de Quinci, Alvered de S. Martin, constables respectively of Pontaudemer, Rouen, Nonancourt, and Neufchâtel (Drincourt). Published incorrectly from the original in the Archives of the Seine-Inférieure by Valin, p. 271.

3. No date; Montfort. "Ista autem donatio facta est apud Montemfortem et recitata in plena assisia coram iusticiis domini regis, scilicet Seherio de Quenceio, Alveredo de Sancto Martino," etc. Fragment of Bec cartulary in Archives of the Eure, H. 91, f. 88v, no. 4.

⁸⁰ John of Marmoutier (ed. Halphen and Poupardin), p. 224 (ed. Marchegay, p. 292).

4. 1178/79; Neufchâtel. William Fitz Ralph holds court. Stapleton, p. 57.

5. 1180; Argentan. Agreement "in plena assisa . . . coram iusticiis domini regis". Witnessed by William Fitz Ralph, "qui preerat assise loco domini regis", William de Mara, Richard Giffart, John, count [of Ponthieu], Fulc d'Aunou, Raoul Tessun, and others. MS. Lat. 5424, p. 91; Collection Moreau, LXXXIV. 76.

6. Before 1182; Rouen. Judgment "in assisa apud Rothomagum in curia mea". Valin, p. 271; Round, no. 26; Delisle, no. 408.

7. 1183, January 20; Caen. "In curia domini regis . . . in plenaria assisa" before William Fitz Ralph and many others. Valin, p. 274; Round, no. 432; Delisle, no. 445A.

8. 1183; Caen(?). William Fitz Ralph and many others, none styled justices, but including William de Mara, Hamo Pincerna, Geoffrey Duredent, Jordan de Landa, Richard Fitz Henry, William de Calux, and Roger d'Arri. Delisle, p. 349; Valin, p. 276; Round, no. 437.

9. 1178-1183; Longueville. William Fitz Ralph and many other justices. Valin, p. 273.

10. 1184; S. Wandrille. Grant "in plenaria assisia coram Willelmo filio Radulfi senescallo et iustitia Normannie et multis aliis iusticiis, scilicet Willelmo de Mara, Seherio de Quinceio, Goscelino Rusel". Collection Moreau, LXXXVII. 157 (*cf.* f. 159), from lost cartulary of Lire; Le Prévost, *Mémoires et Notes pour servir à l'Histoire de l'Eure*, II. 111.

11. 1184; Caen. "Hec finalis concordia facta fuit apud Cadomum in assisia coram Willelmo filio Radulfi senescallo Normannie et pluribus aliis qui tunc ibi aderant inter Robertum abbatem Sancte Marie de Monteborc et Henricum de Tilleio de ecclesia Sancte Marie de Tevilla, unde placitum erat inter eos in curia domini regis. . . . Testibus W. de Mara, Hamone Pincerna, W. de Romara, Radulfo de Haia, Rogero de Arreio, magistro Paridi, Radulfo de Wallamint, Iordano de Landa, Roberto de Curle, W. de Sauceio, Iohanne de Caretot, Willelmo Quarrel et pluribus aliis". Cartulary of Montebourg (MS. Lat. 10087), no. 474.

12. 1185; Caen. William Fitz Ralph and other justices hold assize; the final decision is given at the Exchequer before an important series of witnesses. Valin, p. 277; Round, no. 438.

13. 1186, January 30; Bayeux. Henry, bishop of Bayeux, William de Mara, Archdeacon John d'Éraines, and other justices whose names are not given. Livre Noir, no. 240.

14. 1186; Rouen. Agreement before William Fitz Ralph and Robert d'Harcourt (without title). Collection Moreau, LIX. 106, from the original; Round, no. 140.

15. 1186; Caen. Grant in presence of William Fitz Ralph, William de Mara, William Calviz, Richard Fitz Henry, Geoffrey de Rapendun "tunc baillivus regis", and others. MS. Lat. n. a. 1428, f. 18, from original at Carleton Castle.

16. 1187; Séz. Grant in assize "coram iusticiariis domini Henrici regis, scilicet coram Iohanne archidiacono de Arenis et Willelmo de Mara et aliis pluribus". Livre Blanc of S. Martin of Séz, f. 118v.

17. 1189-1190; Bernai. *Cartulaire de Notre Dame de la Trappe* (ed. Charencey), p. 199; *cf.* Valin, p. 116, note.

18. 1190, August 10; Argentan. Question of presentation "in curia domini regis. . . . Testibus Iohanne archidiacono Arenensi, Richardo de Argentiis, Willelmo de Obvilla constabulario Falasie, qui pefatam

assisiā tenuerant die festo Sancti Laurentii anno primo peregrinationis Philippi regis Francie et Ricardi regis Anglorum". Cartulary of S. Evroul (MS. Lat. 11055), no. 250.

19. 1190, August; Séez. Agreement in assize "coram iusticiariis domini regis Iohanne Oximensi archidiacono, Ricardo de Hummez comestabulario, W. de Ovilla, Ricardo de Argentiis". Livre Blanc of S. Martin, f. 134.

20. 1190; Bernai. "Coram Robert de Harecourt et Willelmo de Mara tunc iusticiis, Willelmo Tolomeo clerico, Richardo Sylvano, comite de Alençon, Richard Deri, et pluribus aliis". An assize at Montfort under Henry II. is mentioned. Archives of the Calvados, H. suppl. 486, f. 9.

21. 1190; Caen. Archives of the Calvados, H. 1872; *Mémoires des Antiquaires*, XV. 199; Round, no. 461.

22. 1191, October; Caen. William Fitz Ralph, Richard Silvain, Richard d'Argences, Hamo Pincerna, Richard Fitz Henry, Robert, abbot of Fontenay, Roger d'Arri, Gui de Vaac, Turstin of Ducey, Geoffrey the chamberlain, "Lucas pincerna, et alii multi" witness transaction in assize. Archives of the Calvados, H. 1868 (no. 46-18).

23. 1191; Rouen. Valin, p. 279.

24. 1191; Caen. Agreement "in curia domini regis apud Cadomum coram Willelmo filio Radulfi tunc temporis senescalco Normannie et Willelmo de Humetis constabulario domini regis et Roberto Wigorniensis episcopo et Ricardo Selvain et Ricardo de Argentiis, Willelmo Caluz, Ricardo filio Henrici, et pluribus aliis". Roger d'Arri is among the witnesses. Archives of the Calvados, H. 7077.

25. 1192; Rouen. Agreement in presence of William Fitz Ralph, William de Martigny, Richard d'Argences, Durand du Pin, and other justices. Chevreux and Vernier, *Les Archives de Normandie et de la Seine-Inférieure*, no. 35.

26. 1187-1193; Caudebec. Agreement "in plena assisia". Lot, *Études Critiques sur l'Abbaye de S. Wandrille*, p. 179, no. 114.

27. Undated; Caen. Grant in curia before William Fitz Ralph and the king's justices and barons, witnessed by William de Hummet constable, William de Mara, Hamo pincerna, Jordan de Landa, Richard Silvain, Richard d'Argences, and others. Archives of the Manche, H. 212.

28. No date; Bayeux. Grant "coram iustitiariis scilicet Willelmo Tolemeir et Ricardo de Argentiis dictam assisiā tenentibus". Archives of the Manche, H. 309.

29. No date; Bayeux. Grant in assize before William Pesnel, archdeacon of Avranches, William Tolomert, Hamo Pincerna, justices. Répertoire of de Gerville (Collection Mancel at Caen, MS. 296), p. 275, no. 21.